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COVER SHEET FOR TELECOPIER MESSAGES

DATE: 9/7/88

TO: Donald Rosenbarger  
G E Ray Construction Co.

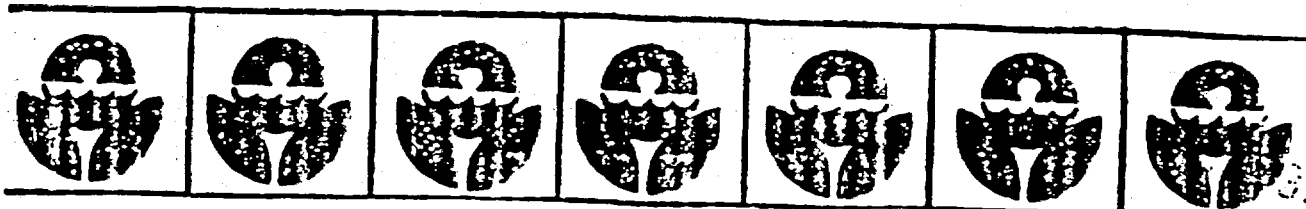
DESK PHONE: 717-779-9717

FROM: Michael T. Cole

DESK PHONE: 597-3166  
(215)

TOTAL NUMBER OF PAGES (NOT INCLUDING COVER SHEET): 2

TELECOPIER TELEPHONE NUMBER, EPA REGION III : 597-7906



AR300577



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

841 Chestnut Building  
Philadelphia, Pennsylvania 19107

In Response Refer To: 3HW12

SEP 06 1988

Mr. Larry DeRoo, Vice President  
GE Ray Construction Company  
P.O. Box 9335  
South Charleston, WV 25309

Re: Butler Mine Tunnel Site  
Dupont Subsidence Control Project

Dear Mr. DeRoo:

On August 30, 1988, representatives from the U.S. Environmental Protection Agency (EPA) and the Pennsylvania Department of Environmental Resources (PADER) examined potential locations at which exploratory boreholes might be drilled into the Butler Mine complex. It is EPA's intent to install exploratory boreholes into the Butler and Heidelberg Mines for the purpose of allowing EPA and PADER to obtain water samples and water level information. EPA and PADER can then determine if the activities of the subsidence control project may act to trigger a release from the Butler Tunnel before a release actually occurs. EPA and PADER agree that the Dupont Area Mine Subsidence Control Project could commence after the exploratory boreholes are installed by GE Ray Construction Company and sufficient baseline data is collected and analyzed by EPA and PADER. Sampling and monitoring conducted by EPA and PADER would continue at these and other locations throughout the mine subsidence control project to indicate if a release from the Tunnel could occur.

Section 107(d)(1) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9607(d)(1), provides that:

"...[N]o person shall be liable under this title for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan ("NCP") or at the direction of an on-scene coordinator appointed under such plans, with respect to an incident creating a danger to public health or welfare or the environment as a result of any releases of a hazardous substance or the threat thereof. This paragraph shall not preclude liability for costs or damages as a result of negligence on the part of such person."

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As the designated Remedial Project Manager for the Butler Mine Tunnel Site, I am authorized to direct "remedial" response operations at the site under the NCP, 40 C.F.R. Sections 300.33 and 300.68 and serve in the same capacity as the on-scene coordinator does when he directs "removal" responses. I am directing you to drill boreholes on the Butler Tunnel Site for which you will be paid in accordance with your contractual arrangements with DER so that data subsequently obtained from the boreholes will aid us in the design and implementation of the RI/FS. Therefore the action I am directing you to undertake would be rendering assistance to EPA taken in accordance with the NCP.

EPA was primarily concerned about withdrawing water containing wastes from the Butler Mine and discharging it into the Heidelberg Mine. EPA has no objection to your company installing the exploratory boreholes into the Butler Mine provided that your company does not withdraw liquid from the boreholes. Installation of the exploratory boreholes at the direction of and under the supervision of EPA will not subject your company to joint and several liability under CERCLA.

If you have any questions regarding this matter or wish to discuss this further, I may be contacted at (215) 597-3166.

Sincerely,



Michael Towle,  
Remedial Project Manager  
PA CERCLA Remedial Enforcement Section

cc: Donald Rosenbarger, GE Ray  
Michael Ferko, PADER  
Ginny Davison, PADER

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